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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(**HONORABLE WILLIAM Q. HAYES**)

UNITED STATES OF AMERICA,

Plaintiff,

v.

BENJAMIN OCHOA-RAMIREZ,

Defendant.

CASE NO.: 08CR1637-WQH

DATE: September 9, 2008

TIME: 9:00 a.m.

**DEFENDANT'S PROPOSED VOIR DIRE
QUESTIONS**

**TO: KAREN P. HEWITT, UNITED STATES ATTORNEY;
DAVID D. LESHNER, ASSISTANT UNITED STATES ATTORNEY; AND
SABRINA FEVE, ASSISTANT UNITED STATES ATTORNEY.**

BENJAMIN OCHOA-RAMIREZ, by and through his counsel, Leila W. Morgan, Hanni M. Fakhoury, and Federal Defenders of San Diego, Inc., requests the Court's permission to ask the jury panel the attached questions, in addition to the Court's standard questions. The attached questions will help ensure a fair trial by allowing further understanding of the potential jurors' backgrounds, possible biases and decision-making abilities and processes.

Respectfully submitted,

Dated: September 8, 2008

s/ Leila W. Morgan

LEILA W. MORGAN

HANNI M. FAKHOURY

Federal Defenders of San Diego, Inc.

Attorneys for Mr. Ochoa-Ramirez

1 1. If you were asked to decide whether Mr. Ochoa-Ramirez was guilty or innocent right now, how
2 would you find him – innocent, guilty, or not enough information? Every person that is charged with a
3 crime is innocent until proven guilty. Indeed, you must presume Mr. Ochoa-Ramirez is innocent throughout
4 the entire proceedings until you deliberate. This is important – particularly in federal court – because you
5 are going to hear the Government’s case first. You will have to presume Mr. Ochoa-Ramirez is innocent
6 through the close of evidence and deliberation of the case – until you actually reach a verdict. Is anybody
7 uncomfortable with this concept such that it would keep them from being a fair and impartial juror?

8 2. The Government has the burden to prove Mr. Ochoa-Ramirez is guilty of all the elements of the
9 crime he has been charged with. Mr. Ochoa-Ramirez is not required to present evidence. Indeed, Mr.
10 Ochoa-Ramirez could sleep through the entire trial and if the Government did not prove all the elements of
11 the crimes charged against him you would still be required to return a verdict of not guilty. Is anyone so
12 uncomfortable with this concept that it would keep them from being a fair and impartial juror?

13 3. Mr. Ochoa-Ramirez is charged with importation of marijuana and possession with intent to distribute
14 marijuana. Does anyone have such strong negative feelings about marijuana and the issues associated with
15 it that they do not believe they can be fair and impartial?

16 4. Many of the Government’s witnesses will likely be law enforcement personnel. Is there anyone on
17 the panel who might have trouble evaluating those witnesses’ testimony the same as all other witnesses? Is
18 there anyone who would tend to give more weight to the testimony simply because they are law enforcement
19 personnel?

20 5. It is a part of a law enforcement officer’s job to testify. Mr. Ochoa-Ramirez has never testified in
21 his life. Mr. Ochoa-Ramirez, should he choose to testify, may not be as comfortable with it as a law
22 enforcement officer. As such, he may not be as articulate as some of the Government witnesses. If this is
23 the case, do any of you think you would hold it against Mr. Ochoa-Ramirez such that you would be hindered
24 in being fair and impartial?

25 6. It is part of my job, and it is Mr. Ochoa-Ramirez’s right, that I ask some difficult questions of the
26 law enforcement officials involved in this case. If I am forced to ask tough questions of the law enforcement
27 personnel that come to court and perhaps challenge the way that some of them did their job, would anyone
28 hold that against Mr. Ochoa-Ramirez? Would anyone have any problem with me asking those kinds of
questions?

1 7. If, after hearing all the evidence, you felt Mr. Ochoa-Ramirez was probably guilty, that is, you were
2 not convinced that he was or was not but you thought the evidence showed he was *probably* was guilty,
3 would you be able to return a verdict of not guilty?

4 8. If, after hearing all the evidence, you do have a reasonable doubt about Mr. Ochoa-Ramirez's guilt
5 and, after listening to the arguments of your fellow jurors when you retire to consider this case, you still have
6 a reasonable doubt, do you think you can remain firm in your conviction and refuse to change your verdict
7 even if it is an unpopular one or might result in a hung jury?

8 9. Would the inconvenience of having to spend an additional time deliberating – away from your job
9 or home – prevent you from remaining firm and refusing to change your verdict, if you still had that
10 reasonable doubt about the guilt of Mr. Ochoa-Ramirez?

11 10. This case involves the Calexico West Port of Entry. Has anyone here not crossed the border in a
12 car from Mexico into the United States? Those of you that have, what have your experience been like at the
13 border? Does anyone cross the border often? Those of you that cross the border often, how do you feel as
14 you approach the border and when you are speaking to the inspectors?

15 11. Mr. Ochoa-Ramirez is charged with a serious crime – importation and possession of marijuana. The
16 judge will instruct you that your job is only to decide whether Mr. Ochoa-Ramirez is guilty or not guilty of
17 the charges, you are not to consider punishment. Is there anyone who will have any difficulty judging Mr.
18 Ochoa-Ramirez to be guilty or not guilty when you cannot know the potential punishment he faces?

19 12. Has anyone ever entered the United States through a port of entry? Did you encounter any inspectors
20 as you entered? Was anyone nervous during their encounter with the inspectors?

21 13. Has anyone ever encountered any law enforcement officer for any reason? During that encounter
22 did you feel nervous? Were you doing anything illegal at the time?

23 14. While driving has anyone ever found a police car coming from behind them? Did you change your
24 driving behavior? Did you watch police car? Were you nervous?

25 15. Mr. Ochoa-Ramirez does not speak English, he speaks Spanish. Do you have any strong feelings
26 about individuals who do not speak English who enter the United States such that it would prevent you from
27 being fair and impartial in this case?

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1 16. Mr. Ochoa-Ramirez is not a United States citizen. Do you have any opinion on whether individuals
2 who are not United States citizens should be afforded the same rights as United States citizens during
3 criminal proceedings?
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CERTIFICATE OF SERVICE

Counsel for Defendant certifies that the foregoing pleading is true and accurate to the best of her information and belief, and that a copy of the foregoing document has been served this day upon:

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Dated: September 8, 2008

/s/ Leila W. Morgan
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